

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 7  
)  
)  
MACK INDUSTRIES, LTD., *et al.*, ) Case No. 17-09308  
) (Jointly Administered)  
)  
Debtors. ) Hon. Carol A. Doyle  
)  
) Hearing: December 21, 2017 at 10:00 a.m.

**NOTICE OF MOTION**

TO: ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on Thursday, December 21, 2017 at 10:00 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Carol A. Doyle in Courtroom 742 at 219 South Dearborn Street, Chicago, Illinois 60604, or before any other judge sitting in her place and stead, and present the following **Motion To Sell Real Estate Free And Clear And Shorten Notice**, at which time and place you may appear if you so desire.

**PURSUANT TO FED. R. BANKR. P. 9014 AND 9006(d) THE TIME TO RESPOND TO THIS MOTION IS NOT LATER THAN ONE DAY BEFORE THE HEARING UNLESS THE COURT ORDERS OTHERWISE.**

Dated: December 12, 2017

RONALD R. PETERSON, not individually  
but as the chapter 7 Trustee for the bankruptcy  
estates of Mack Industries, Ltd., *et al.*,

By: /s/ Ronald R. Peterson  
Ronald R. Peterson

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**CERTIFICATE OF SERVICE**

I, Ronald R. Peterson, an attorney, certify that on December 12, 2017, I caused a copy of the foregoing **Notice of Motion** and **Motion To Sell Real Estate Free And Clear And Shorten Notice** to be served upon each of the parties listed on the attached Service List by the Court's CM/ECF system or first class U.S. mail postage prepaid, as indicated.

/s/ Ronald R. Peterson

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200 N. LaSalle Street, Suite 2020  
Chicago, IL 60601

Wells Fargo, N.A.  
c/o Timothy J. Sloan  
101 N. Phillips Avenue  
Sioux Falls, SD 57104

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 7
	)	
MACK INDUSTRIES, LTD., <i>et al.</i> ,	)	Case No. 17-09308
	)	(Jointly Administered)
	)	
Debtors.	)	Hon. Carol A. Doyle
	)	
	)	Hearing: December 21, 2017 at 10:00 a.m.

**MOTION TO SELL REAL ESTATE FREE AND CLEAR AND SHORTEN NOTICE**

Ronald R. Peterson, not individually, but as chapter 7 trustee (the “Trustee”) for the bankruptcy estates of Mack Industries, Ltd., *et al.* (the “Debtors”), respectfully requests that the Court enter an Order pursuant to 11 U.S.C. § 363(b), (f) and (m) and Fed. R. Bankr. P. 6004 authorizing the Trustee to sell the interest of the Mack Industries II, LLC and Mack Industries, Ltd. estates in a certain parcels of real estate on shortened notice of nine days (the “Motion”), and states:

**JURISDICTION & VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) in which the Court may constitutionally enter a final order, and the Trustee consents to the entry of a final order by the Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This Motion is made pursuant to § 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

## **BACKGROUND**

3. On March 24, 2017 (the “Mack Ltd. Petition Date”), Mack Industries, Ltd. (“Mack Ltd.”) filed a case under chapter 11 of the Bankruptcy Code (the “Mack Ltd. Case”).

4. On June 1, 2017, the Court entered an Order converting the Mack Ltd. Case to a case under chapter 7. (Case No. 17-09308, Dkt. 92.) On the same date, the U.S. Trustee duly appointed Ronald R. Peterson as the chapter 7 Trustee. (Case No. 17-09308, Dkt. 84.)

5. On May 31, 2017 (the “Mack Industries II Petition Date”), an entity affiliated with Mack Ltd.—Mack Industries II, LLC (“Mack Industries II”)—also filed under chapter 7 of the Bankruptcy Code. On June 1, 2017 (the “Mack III & IV Petition Date” and collectively with the Mack Ltd. Petition Date and Mack Industries II Petition Date, the “Petition Dates”), two entities affiliated with Mack Ltd. and Mack Industries II—Mack Industries III, LLC (“Mack Industries III”) and Mack Industries IV, LLC (“Mack Industries IV”)—filed under chapter 7 of the Bankruptcy Code as well. Thereafter, the U.S. Trustee appointed Ronald R. Peterson as the chapter 7 Trustee in the Mack Industries II, Mack Industries III, and Mack Industries IV cases (collectively with the Mack Ltd. Case, the “Mack Cases”). (Case No. 17-16859, Dkt. 8; Case No. 17-17106, Dkt. 6; Case No. 17-17109, Dkt. 7.)

6. On June 21, 2017, the Court ordered the joint administration of the Mack Cases. (Case No. 17-09308, Dkt. 110.) On the same day, the Court authorized the Trustee to retain Foresite Realty Advisors, LLC (“Foresite”) as the Trustee’s property manager and advisor in the Mack Cases, with the maximum commission on any sale of real estate in these cases to be 6.0% of the gross sale price, payable entirely to Foresite or split between Foresite and a cooperating broker by separate agreement between Foresite and any such broker. (See Case No. 17-09308, Dkt. 97-3 (Exhibit C to the Trustee’s motion to retain Foresite setting forth terms regarding inter



alia commissions); Case No. 17-09308, Dkt. 105 (approving Foresite's retention on the terms of the agreements attached as Exhibits A, B and C to the Trustee's motion to retain Foresite).)

7. In the meantime, certain creditors of Oak Park Avenue Realty, Ltd. ("Oak Park"), an entity affiliated with Mack Ltd. and Mack Industries II, Mack Industries III and Mack Industries IV, filed an involuntary case under chapter 11 of the Bankruptcy Code against Oak Park (the "Oak Park Case"). (Case No. 17-16651, Dkt. 1.) On June 29, 2017, the Court entered an order for relief in the Oak Park Case and on July 12, 2017, the Court granted the Oak Park's motion to convert the Oak Park Case to a case under chapter 7. (Case No. 17-16651, Dkt. 22 & 29.) Thereafter, the U.S. Trustee appointed Ronald R. Peterson as the chapter 7 Trustee in the Oak Park Case. (Case No. 17-16651, Dkt. 31.)

8. On July 27, 2017, the Court ordered the joint administration of the Oak Park Case with the Mack Cases. (Case No. 17-09308, Dkt. 132.) Thereafter, the Court approved the Trustee's retention of Foresite in the Oak Park Case on the same terms as in the Mack Cases. (*See* Case No. 17-09308, Dkt. 217.)

9. As of the Mack Industries II Petition Date, Mack Industries II owned certain parcels of real estate located in Cook and Will Counties having the following tax parcel identification numbers and addresses and whose legal descriptions are attached as Exhibit A hereto and incorporated herein by reference (the "Mack Industries II Properties"):

Address: 11459 South St. Louis Avenue, Chicago, IL 60655-3526  
PIN: 24-23-214-038-0000

Address: 3145 Kilpatrick Avenue, Chicago, IL 60641-5241  
PIN: 13-27-102-011-0000

Address: 3707 Marquette Road Chicago, IL 60629-4142  
PIN: 19-23-302-052-0000

Address: 5200 South Mayfield Avenue, Chicago, IL 60638-1512  
PIN: 19-08-409-025-0000

Address: 6211 South Mason Avenue, Chicago, IL 60638  
PIN: 19-17-425-004-0000

Address: 25774 South Taft Street, Monee, IL 60449  
PIN: 21-14-20-208-023

Address: 8942 Ridgeland Avenue Oak Lawn, IL 60453-1059  
PIN: 24-06-201-030-0000

Address: 1618 South 61st Avenue, Cicero, IL 60804  
PIN: 16-20-305-026-0000

Address: 1326 South 59th Court, Cicero, IL 60804-1146  
PIN: 16-20-208-022-0000

Address: 12748 South Muskegon Avenue, Chicago, IL 60633  
PIN: 26-30-311-052-0000

Address: 7115 South Homan Avenue, Chicago, IL 60629-3521  
PIN: 19-26-204-011-0000

Address: 18807 Cypress Avenue, Country Club Hills, IL 60478-5654  
PIN: 31-03-418-019-0000

Address: 4305 Clark Drive, Richton Park, IL 60471  
PIN: 31-27-409-021-0000

Address: 3704 South 58th Avenue, Cicero, IL 60804-4205  
PIN: 16-32-419-021-0000

Address: 2660 201st Street, Lynwood, IL 60411-1528  
PIN: 33-07-313-001-0000

Address: 2524 High Street, Blue Island, IL 60406  
PIN: 24-36-218-006-0000

Address: 17950 Ridgewood Avenue, Lansing, IL 60438  
PIN: 30-31-209-044-0000

10. Pan American Bank (“Pan Am”) asserts a secured claim in the Mack Industries II Properties.

11. Additionally, as of the Mack Ltd. Petition Date, Mack Ltd. owned a certain parcel of real estate located in Cook County having the tax parcel identification number 27-34-112-006-0000 and commonly known as 17669 Peacock Lane, Tinley Park, Illinois, 60487, whose legal description is also attached as Exhibit A hereto and incorporated herein by reference (the “Mack Ltd. Property” and collectively with the Mack Industries II Properties, the “Properties”).

12. Amalgamated Bank of Chicago (“Amalgamated”) asserts a secured lien over the Mack Ltd. Property.

13. On December 11, 2017, the Trustee agreed, subject to the Court’s approval, to enter into a contract for the sale of the interests of Mack Industries II and Mack Ltd. in the Properties (the “Purchase Agreement”) to Dynasty Consulting I LLC (the “Purchaser”) for consideration in the amount of \$2,062,500.00 (the “Purchase Price”) in cash with no contingencies and earnest money in the amount of \$50,000.00. A copy of the Purchase Agreement with all exhibits is attached as Exhibit B hereto and incorporated herein by reference. The Purchase Agreement provides that the Trustee as seller will pay the following customary closing costs: title commitment and policy fees; unpaid real property taxes for tax years before 2017; state and county stamp or other transfer taxes; and Foresite’s 6.0% commission. (Ex. B, at 3.) The Purchase Agreement further provides that the Purchaser will pay as closing costs: escrow or closing fees; title policy premiums; municipal stamp or other transfer taxes; recording charges or costs; due diligence costs incurred by the Purchaser; and the Purchaser’s legal fees, if any. (Ex. B, at 3.)

14. The Trustee anticipates that the proceeds of the proposed sale of the Mack Ltd. Property will be sufficient to cover the Trustee’s closing costs and any liens, claims, encumbrances and other interests in the Mack Ltd. Property with a surplus allocable to the Mack Ltd. estate. As to the Mack Industries II Properties, the Trustee and Pan Am are in discussions regarding how Pan

Am's asserted liens will be treated in these bankruptcy cases. Pan Am has no objection to the proposed sale, and the sale proceeds (net of the costs associated with the closing) will be placed in escrow pending a final resolution between the Trustee and Pan Am.

### **RELIEF REQUESTED**

15. By this Motion, pursuant to Bankruptcy Code § 363(b), (f) and (m) and Bankruptcy Rule 6004, the Trustee seeks: authority to sell the Properties pursuant to the terms of the Purchase Agreement and free and clear of all liens, claims, encumbrances and other interests, with all such interests to attach to the sale proceeds; authority to pay from the proceeds of the sale all claims against the property, including unpaid real estate taxes; authority to pay certain customary closing costs and expenses associated with the sale, including Foresite's 6.0% commission to the Brokers, as set forth in section 8 of the Purchase Agreement; authority to take necessary and appropriate ministerial acts to effectuate the sale and transfer; authority to escrow the sale proceeds allocable to the Mack Industries II Properties pending resolution of disputes regarding the validity and perfection of certain asserted liens in the Mack Industries II Properties; a finding that the Purchaser is a purchaser in good faith within the meaning of Bankruptcy Code § 363(m); and a provision that the Order granting the relief sought in this Motion will not be stayed for fourteen days after entry, but will be effective and enforceable immediately upon entry pursuant to Bankruptcy Rule 6004(h).

### **BASIS FOR RELIEF**

16. The Trustee, upon due consultation with Foresite, believes that the proposed Purchase Price is a fair consideration for the interests of the Mack Industries II and Mack Ltd. estates in the Properties in light of the conditions of the Properties, the prevailing market conditions, and all the attendant facts and circumstances.

17. The Trustee further believes that the Purchase Agreement and contemplated sale are the result of arm's length negotiations in good faith and not by means forbidden by law, and that the Purchaser has at all times acted in good faith.

18. In considering and negotiating the Purchase Agreement, the Trustee worked carefully with his property manager, Foresite, who has informed the Trustee that the Purchase Price likely is greater than what the Trustee reasonably could expect to receive through the general bidding and sale procedures the Trustee has proposed to use in selling other of the Debtors' real property interests. (*See* Case No. 17-09308, Dkt. 302.)

19. Accordingly, pursuant to Bankruptcy Code § 363(b) and (f), the Trustee seeks authorization to sell the Properties pursuant to the terms of the Purchase Agreement and the Settlement Statement and free and clear of all liens, claims, encumbrances and other interests, with all such interests to attach to the sale proceeds. The Trustee also seeks authorization to pay certain customary closing costs and expenses associated with the sale, as set forth in section 8 of the Purchase Agreement, including Foresite's 6.0% commission.

20. In addition, the Trustee seeks authority to pay from the proceeds of the proposed sale all claims against the Property, including unpaid real estate taxes, and authority to take necessary and appropriate ministerial acts to convey the Property, including, but not limited to, executing, delivering or filing any instruments, agreements or documents necessary to effectuate the transfer to the Purchaser per Bankruptcy Rule 6004(f)(2). The Trustee also seeks authority to escrow the sale proceeds allocable to the Mack Industries II Properties, less closing costs, pending resolution of the dispute regarding the validity and perfection of Pan American's mortgages.

21. The Trustee further requests that the Court find that the Purchaser is a purchaser in good faith within the meaning of § 363(m) of the Bankruptcy Code, and provide that, pursuant to

Bankruptcy Rule 6004(h), the Order granting the relief sought in this Motion will not be stayed for fourteen days after entry, but will be effective and enforceable immediately upon entry.

### NOTICE

22. Bankruptcy Rule 2002(a)(2), (c)(1) and (k) and Bankruptcy Rule 6004(a) and (c) provide for twenty-one days' notice to the U.S. Trustee, the debtor, creditors, and other parties in interest, including parties that may have liens, encumbrances or other interests in a property proposed to be sold free and clear, of such a proposed sale of property other than in the ordinary course and free and clear of liens and other interests "unless the court for cause shown shortens the time or directs another method of giving notice." Fed. R. Bankr. P. 2002(a)(2). *See also* Fed. R. Bankr. P. 9006(c)(1) ("[W]hen an act is required or allowed to be done at or within a specified time . . . the court for cause shown may in its discretion . . . order the period reduced.") and Fed. R. Bankr. P. 9007 (providing general authority to regulate notices). Under the circumstances, including, but not limited to, the upcoming holiday season and the fact that the Banks have no objection to the Motion, the Trustee respectfully submits that cause exists to shorten the time for giving notice to ten days, so that the Trustee may present this Motion at the Thursday, December 21, 2017 hearing.

23. The Trustee has given nine days' notice of this Motion to the U.S. Trustee, the Debtors, creditors, and other parties in interest, including parties that may have liens, encumbrances or other interests in the Property, pursuant to Bankruptcy Rules 2002 and 6004. Further, and also pursuant to Bankruptcy Rule 6004, the Trustee has made this Motion in accordance with Bankruptcy Rule 9014, including by serving in the manner specified by Bankruptcy Rule 7004 and within the time provided by Bankruptcy Rule 9006(d). Under the circumstances, the Trustee believes that the notice given is sufficient and appropriate.

WHEREFORE, the Trustee respectfully requests that the Court enter an Order substantially in the form of the attached proposed order:

A. Finding that the Purchaser is a purchaser in good faith within the meaning of Bankruptcy Code § 363(m);

B. Finding that the Trustee has given sufficient and appropriate notice of this Motion;

C. Authorizing the Trustee to sell the Properties and approving the sale of the Properties under the terms of the Purchase Agreement attached hereto as Exhibit B and free and clear of all liens, claims, encumbrances and other interests, with any such interests to attach to the proceeds of the sale;

D. Authorizing the Trustee to pay certain customary closing costs and expenses associated with the sale, including Foresite's 6.0% commission, as set forth in section 8 of the Purchase Agreement, from the proceeds of the sale;

E. Authorizing the Trustee to pay all claims against the Properties, including, but not limited to, any unpaid real estate taxes, from the proceeds of the sale;

F. Authorizing the Trustee to take necessary and appropriate ministerial acts to convey the Properties, including, but not limited to, executing, delivering or filing any instruments, agreements or documents necessary to effectuate the transfer to the Purchaser per Bankruptcy Rule 6004(f)(2);

G. Authorizing the Trustee to escrow a portion of the sale proceeds allocable to the Mack Industries II Properties, after first deducting closing costs and expenses, including Foresite's commission and unpaid real estate taxes, pending resolution of any disputes with Pan American regarding the existence, validity, or perfection of any mortgages or other consensual liens or

security interests asserted or claimed by Pan American in or against the Mack Industries II Properties.

H. Providing that the Order so entered will not be stayed for fourteen days after entry, but will be effective and enforceable immediately upon entry, pursuant to Bankruptcy Rule 6004(h);

I. Providing that the Trustee will file a final report of sale in accordance with Bankruptcy Rule 6004(f)(1) on completion of the sale; and

J. Granting such other or further relief as the Court may deem just.

Respectfully submitted,

Dated: December 12, 2017

RONALD R. PETERSON, not individually  
but as the chapter 7 Trustee for the bankruptcy  
estates of Mack Industries, Ltd., *et al.*,

By: /s/ Ronald R. Peterson  
Ronald R. Peterson

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